

A. Reference was made to Section 00800 Part A, paragraph 3.1 of the RFP. This was specifically referencing the letters of commitment for subcontractors. I do not find a Part A in Section 00800. Can you give me a specific page reference? I have 462 pages in the RFP. Is this correct?

**ANSWER:** There is a Part A for Section 0800, as stated on p. 28. The reference for subcontractor letters of commitment is on p. 34, para. 3.1.1.3.

B. Secondly, reference was made to flow down clauses to subcontractors in Section 00700. Is the verbiage in each clause the location of the indication of which clauses are flow down and which are not? That is to say, is there a list of which clauses are flow down or a list of which clauses are not flow down?

**ANSWER:** Each clause will state whether it has flow down terms. See, e.g., DFARS 252.222-7000(b). If the clause does not so state, no requirement exists for flow down.

C. Can you tell me if there will be a Union Project Labor Agreement in place for the Ft. Greely Missile Defense project?

**ANSWER:** The Corps is not requiring that a project labor agreement be used for this procurement. It has been the Army's policy to remain impartial regarding its contractors' labor management relations. The contractor may voluntarily enter into a project labor agreement for this project

D. As stated in the FedBizOpps, the contract duration is expected to be approximately two years excluding options. What is the total expected period of performance including the options? For example, is the total period of performance for five years (two year base + three one year option periods).

**ANSWER:** The RFP states the known requirements for the overall time frame for this project.

E. What is the expected NAICS Code for the upcoming solicitation?

**ANSWER:** See FAR 52.219-1(a) (p. 72).

F. Section 00100, Para. 3.1.1.3 requires the offerors to submit a letter from our subcontractors that contain an unconditional statement that the subcontractor will perform if we are selected. Our current teaming agreements with our subcontractors typically provide that the agreement will terminate in the event of a failure of the parties to agree upon the terms and conditions of the Subcontract, after negotiation in good faith. Please verify that this provision, which imposes an obligation of good faith on both parties, would not make a subcontractors commitment conditional within the meaning of Paragraph 3.1.1.3. Otherwise, we will be forced to complete negotiations of the subcontract terms prior to submission of the proposal.

**ANSWER:** The statement referenced in the second sentence of the question would be unacceptable for the letter, because then the commitment would be conditional on future

negotiations or other events. Conditional letters detract from the assurance we need that the subcontractor will perform as represented. Therefore, we recommend a single sentence letter from the subcontractor, as follows: "(Name of subcontractor) unconditionally commits to performance under the contract in the event of an award to (Name of offeror)."

G. The RFP includes options for installation of IDTs at a number of undefined and undisclosed locations, with the note that the contractor is to "assume Ft. Greely for determining price" (CLINs 0011-0015). Additionally, there are multiple options for installation IDTs at Ft. Greely (CLINs 0008-0010) and Eareckson Air Station (CLINs 0004-0005). The contract, however, does not contain clauses that specify how the government will exercise these options, how the price will be definitized, or whether the government will consider these options in the cost evaluation. We are concerned that pricing the options will not be meaningful for a number of reasons. For example, there are likely to be numerous differences in the pricing simply due to the changes to the Ft. Greely baseline occurring during completion of the design activities. Add to that, the options will need to be repriced for changes in performance methods and schedules for the units at EAS and Ft. Greely and for locations for the other option quantities. If pricing is required at this time, both the Contractor and the Corps will be required to justify the each differences in the pricing from that in the bid, rather than rebaselining at the time of option exercise.

Because of the unknowns associated with these options, we recommend that the RFP be revised to have these options be unpriced rather than priced based on the Ft. Greely pricing. This will avoid a number of difficulties that would otherwise occur during definitization. Second, we recommend deletion of FAR 52.217-7 and instead, inclusion of a special provision describing option exercise clause. Further, we recommend that the Government include in that special provision a discussion of the process definitizing the options (e.g., a clause based on FAR 52.216-25 for the option quantities). Finally, we recommend that the Government include FAR 52.217-3, Evaluation Exclusive of Options, in the RFP.

**ANSWER:** There are several clauses that reference exercise of the options, and how definitization will occur. See Section 0010, para. 1.0 (p. 4); FAR 52.217-7 (p. 113); see also note 2 on each page of schedule containing an option.

The Contracting Officer is aware that some uncertainty surrounds the options, for example, the actual sites for the "Other Alaska Location" and "Location Outside Alaska" are unknown at this time, which is the reason for designating Fort Greely for pricing purposes. We do not believe that there is undue or excessive risk associated with the approach on options. First, from a technical perspective, the only significant variable between the option items and the Schedules with specific identified sites will be the definitized location. Second, this will be a cost reimbursement contract, which shifts a great deal of the cost risk from the contractor to the government. Third, the contract further recognizes that there will be negotiations after the options are exercised on various terms. See Section 0100, para. 1.0. Fourth, all offerors are subject to the same groundrules regarding pricing of the options, which makes for a level playing field. Thus, no offeror has an unfair advantage or disadvantage regarding the options.

The suggestion to exclude the options from the evaluation will deprive the agency of the ability to determine the most advantageous proposer for the entire, likely test bed project. If the options are unpriced, then the agency would be required to conduct a separate procurement on a sole

source basis, which could be problematic and cost ineffective. See FAR 17.207(f). The Contracting Officer believes that the current approach on options is fully supported by the regulations, the nature of the work and, above all, is fair and reasonable.

H. Section 00800, Article 13.0 provides in part:

Use of an Indian Tribe or Tribally Owned Corporations will be credited toward the contractor's goal for Small Disadvantaged Business, but will NOT be credited toward the contractor's Small Business goal. The offeror shall explain for each Small Disadvantaged Business (SDB) concern for which it seeks evaluation credit the particular regulatory basis on how the concern is eligible for such status.

We believe that this provision, allowing Alaskan Native Corporations (ANCs) to qualify towards small disadvantaged business (SDB) goals, but not small business (SB) goals, is inconsistent with both the intent and purpose of Defense Appropriations Act for FY 2002, Pub. L. 107-117, section 702. Therefore, it should be deleted. Section 603 provided among other things that Alaskan Native Corporations "shall be credited towards the satisfaction of a contractor's obligations under section 7 of P.L. 87-305." This public law, codified at 15 USC Sec. 637, Aid to Small Businesses {verify title}, forms the statutory underpinnings for Part 19 of the FAR, and FAR 52.219-9 and FAR 52.219-16. See, e.g., 15 USC Secs. 637(d)(4)(B) and (4)(F). 15 USC 637(d)(1) provides:

It is the policy of the United States that small business concerns . . . [and] small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts . . .

Importantly, 15 USC Sec 637(d)(3)(C) defines SBs and SDBs as:

As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act [15 USC Sec. 632] and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern . . .

Even the SF294 and SF 295, includes the following instruction for Block 10a: "Report all subcontracts awarded to SBs including Subcontract to SDBs, WOSBs, VOSBs and HUBzone SBs" SDBs are *defined* as SBs. Thus, under the relevant statutory authority ANCs cannot be an SDB without also being an SB.

Further, the proposed Section 13.0 would defeat the Congressional intent. By limiting credit for subcontracting with ANCs only towards the SDB goal, the RFP effectively caps the participation of ANCs at that goal for SDBs, inasmuch as any significant use of ANCs would make unlikely meeting the Corp's SB goal.

**ANSWER:** The language you cited “Section 00800, Article 13.0” has been amended. The original provision reflected implementation of 10 U.S.C. §2323a. Usually, small disadvantaged business (SDB) concerns are by definition and operation also small businesses (SB). ANCs that *qualify* and that are *certified* by SBA as an SDB concern can and will received the appropriate credit towards meeting the contractor’s SB goal and SDB goal. (see 13 C.F.R. §124.1001 *et seq.*)

Moreover, work under the contract or its subcontract shall be credited toward meeting the SDB subcontracting goal if the requirements of 10 U.S.C. §2323a are satisfied. Once again, your attention is directed to Amendment 01, number 21, concerning Section 00800.

43 U.S.C. §1626(e), as amended by P.L. 107-117, Section 702, is consistent with the above-mentioned interpretation of statutes and regulations.

Alaska Native Corporations qualify as tribally owned business for the purposes of 10 U.S.C. §2323a.

I. SP 16.0 Overtime: We anticipate addressing overtime staffing requirements as part of our cost proposal and technical approach for the project. Please confirm that acceptance of our proposal will constitute approval under Section 00800, Article 16.0, of the overtime identified therein.

**ANSWER:** Overtime is not pre-approved, but must be authorized in accordance with the contract clauses. See FAR 52.222-2 (p. 123); Section 0800, para. 16.0. Offerors should also designate in their cost proposals the rate for inclusion in FAR 52.222-2(a).

J. Section 00800, Article 38.0: The key personnel clause prohibits the contractor from reassigning personnel without CO consent.

- We assume that the consent will not be unreasonably withheld. Please confirm.
- While we recognize that reassignment of key personnel at critical points of the project would not be desirable for meeting the Corps goals, and likely to result in performance deficiencies that impact award fee, a number of factors suggest that the proposed key personnel clause may be overly restrictive. For example, the contract term permits options to be exercised over a two year period for work that may take several years to perform. Moreover, due to weather conditions, etc. the work may not be continuous and may be at widely divergent sites. Please confirm that length of time, location, replacement work, etc. could all be factors that would justify reassignment.

**ANSWER:** Consent will not be unreasonably withheld. If there are unforeseen circumstances such that the designated key personnel are no longer available, the agency will apply common sense and good judgment in reviewing the qualifications of proposed substitutes. All relevant factors will be considered for this decision.

K. With respect to the SF 1442, Block 12A, we note that DFARS 228.102-1(4)(a) indicates that the requirement for performance and payment bonds is waived for cost reimbursement contracts. The waiver is premised on the fact that in a cost reimbursement contract, the government gets few benefits from the bond--even in the event of a default; the contractor will received its costs

and the surety will receive reimbursement in accordance with the contract. Further, recent events has resulted in a tightening of the insurance and surety markets. As a result, the cost of the bid/performance and payment bonds are likely to have increased, yet will continue to provide limited protections to the government. Because the contract meets the criteria of DFARS 228.102-1(4)(a), we requested that FAR 52.228-1 and FAR 52.228-15 be deleted.

**ANSWER:** The cited provision, DFARS 228.102-1, applies only to Defense Environmental Restoration program construction contracts entered into as of December, 1999. The proposed contract does not come within the above program.

L. Section 00100, Para. 1.1: DFARS Case 99-D028, 66 Fed. Reg. 55157 (November 1, 2001) promulgated a second draft of the proposed rule regarding exclusive teaming arrangements. This guidance is somewhat different than that provided in the earlier Gansler memorandum. Accordingly, we had assumed that this rule making process superceded the Gansler Memorandum. Please confirm that teaming will be evaluated under the standards in the proposed DFARS Subpart 203.3. We also recommend deleting Para. 1.1 and the Gansler memorandum.

**ANSWER:** The Contracting Officer cannot rely on proposed DFAR terms; the Gansler memorandum remains valid guidance.

M. Para. 2.4 suggests that the oral presentation may be incorporated into the contract. Given the potential for introducing ambiguity that might result from direct incorporation into the contract of the condensed information on the slide presentation, we suggest that this section be revised to require the parties to enter into good faith negotiations to incorporate promises and commitments made during the oral presentation.

**ANSWER:** Para. 2.4 must remain as is to ensure that award may proceed on initial proposals, per p. 53, para. 1.0, if conditions favor this approach. If discussions do occur, then negotiations might occur on the possible incorporation of the terms after negotiations. The offeror should be aware, however, that if negotiations occur on the possible incorporation of the oral presentation, and the offeror backs away from certain promises or representations made at the oral presentation, such action could prompt a re-evaluation of that offeror's rating on the oral presentation.

N. Please clarify whether you intend the contractor to have risk of loss for purchased materials and work in progress. FAR 52.245-5 provides that the contractor has limited risk of loss unless loss or damage is the result of, among other things, willful misconduct of managerial personnel or the contractor is responsible under the express terms of the contract. On the other hand FAR 52.236-7 provides that the contractor shall be "responsible for all materials delivered and the work performed until completion". If you intend that the Contractor will have risk of loss for mere negligence as implied by FAR 52.236-7, we will purchase builders risk insurance as an allowable cost under FAR 31.205-19. Alternatively, if you intend that the contractor have limited risk of loss pursuant to FAR 52.245-5, or that the references in FAR 52.236-7 to responsibility refer to actions of managerial personnel under FAR 52.245-5, then we will not

obtain builders risk insurance for the project. Please let us know as soon as possible so we can price builders risk insurance if necessary.

Additionally, if it is not your intention that we purchase Builder's Risk insurance, please confirm that the "property" referred to in the section of FAR 52.236-7 that states "the Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence" does not include any government property identified in accordance with FAR 52.245-5.

**ANSWER:** The RFP does not require that the contractor have builders risk insurance for this project. Such costs could possibly be an allowable cost under FAR 31.205-19, although it is not possible at this time to give a definitive answer, pending review of costs when submitted. Regarding the second part of the question, the more specific FAR 52.245-5 covers contractor liability for damage to government property.

O. We had a number of minor comments on the proposed non-disclosure agreements. Are we correct in assuming that we are to address these comments directly with the contractors identified in the RFP?

**ANSWER:** Yes.

P. Will the Alaska USACE provide a schedule of allowable rates for construction equipment? If not will the Blue Book Rates be applicable?

**ANSWER:** Should the contractor decide to rent construction equipment then he must follow Section 00700, FAR 52.244-5, Competition in Subcontracting, which will establish the appropriate rate. If the contractor owns the equipment then he shall follow Section 00700, EFAR 52.249-5000, Basis for Settlement of Proposal. Blue Book Rates are not part of the RFP.

Q. Can the threshold for past performance be lowered from 10% to 5% to allow smaller speciality subcontractors highly technical experience to be included?

**ANSWER:** No.

R. Does the BOD for the "Perimeter Security Fence" mean the security fence around the individual buildings or the perimeter fence around the site? Please clarify this BOD.

**ANSWER:** See AM 001, p. 10, #24 for a discussion of this point.

S. The RFP states differing due days for the initial Cost Performance Report: Section 00010, Page 5, paragraph 1.2.1.1.f(9) states Initial Cost Performance Report (Due 30 days after NTP) and Section 00010, Page 9, paragraph 4.2.1.1 (a) states first submission of Cost Performance Report, 45 days after Contract Award. Which due date prevails?

**ANSWER:** Paragraph 4.2.1.1 states the correct due date for initial Cost Performance Reports (45 days). The next amendment will reflect a change to paragraph 1.2.1.1.f (9).

T. Will USACE accept the owner/Client Past Performance Survey Form and Project Experience Form electronically (fax or e-mail) from the owner/client representative?

**ANSWER:** Yes.

U. USACE was to designate a specific site in Delta Junction for the mancamp. Has this site been designated?

**ANSWER:** Mancamp location is to be decided by the Contractor, based on the Contractor's specific requirements.